IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.A.No. 458 of 2006
Date of decision:23.11.2006

Commissioner of IncomeTax, Chandigarh-II

...Appellant

Versus

Mr. Kunio Ikai

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present:Mr.S.K.Garg Narwana, Advocate for the revenue.

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JUDGMENT

This appeal has been preferred under Section 260-A of Income Tax Act, 1961 (for short "the Act") proposing the following substantial questions of law arising out of the order dated 6.3.2006 of the Income Tax Appellate Tribunal, Chandigarh (for short "the Tribunal) passed in ITA No.4922/Chandi/2003 in respect of the assessment year 1993-94:-

> "1. Whether, on the stated facts of the case, the Income-tax Appellate Tribunal is correct in law in holding that the assessee is entitled to the benefit claimed by him under section 10(6) (viia) of the Income-tax Act, 1961 in respect of salary, including perquisites received by him?
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> 2. Whether, on the stated facts, the assessee would be considered as a 'technician' for the purpose of section 10(6) (viia) of the Act?"

The respondent was employed for rendering technical service

in connection with manufacturing of telecommunication equipment and computers etc. in pursuance of the joint venture agreement dated 26.12.1991 with Punjab State Electronics Development and Production Corporation and Fujitsu India Telecom Ltd. He was a Japan national. During the financial year 1992-93, the respondent was in India and filed returns in respect of salary received. Exemption was claimed under Section 10(6)(viia) of the Income-tax Act, 1961(for short "the Act") in respect of the tax paid by the employer on the salaries of expatriate technician. This claim was rejected by the Assessing Officer primary on the ground that the contract of employment was not approved by the Central Government and there was no clause in the employment contract that tax payable on the remuneration will be paid by the employer. This view was reversed by the CIT(A) and plea of the assessee was accepted. Appeal of the revenue has been dismissed by the Tribunal.

The Tribunal held that requirement for approval of the employment contract was done away vide Finance Act, 1992 and thereafter the approval of Central Government was not required. It was further held that there was no legal requirement of written contract containing a stipulation that the employer will pay the tax. The Authority of Advance Rulings in the case of **Monte Harris Vs. CIT, (1996) 218 ITR 413** was held to be not applicable as it was not laid down therein that there should be written agreement whereby employer agreed to pay the tax following which the Assessing Officer rejected the claim of the respondent. The Tribunal further held that respondent was clearly engaged in rendering technical services in pursuance of joint venture after agreement entered into by the employer.

We have heard learned counsel for the revenue and perused the record.

Case for exemption under Section 10(6)(viia) of the Act has been fully made out in view of the findings recorded. It has been clearly held that respondent rendered the services as technician. It was fully covered by the statutory provisions. The respondent being Telecom

Engineer was clearly a technician and is entitled for exemption.

In view of the above, we do not find that any substantial question of law arises for consideration of this Court.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 23,2006 **(Rajesh Bindal)**
Pka **Judge**